IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7144 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

BHARATBHAI CHANABHAI BABARIA

Appearance:

1. First Appeal No. 7144 of 1999
MR ASHISH H SHAH for Petitioner No. 1
MR MD PANDYA for Respondent No. 1
NOTICE SERVED for Respondent No. 2-3
DAKSHESH MEHTA for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard learned Counsel for the respective parties. Appeal admitted. Mr.Dakshesh Mehta appears for respondent no.4, the Insurance Company who had insured the motor cycle which was involved in the accident, and waives service of notice in the Appeal.

2. At the joint request of learned Counsel for the appellant and the said Insurance Company, this appeal is taken up for final hearing today.

3. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, at the instance of the Gujarat State Road Transport Corporation, being the owner of the bus involved in the accident.

4. The only contention raised by the learned Counsel for the appellant is that the Tribunal has found the driver of the bus to be contributory to the accident to the extent of 85%, and the driver of the motor cycle responsible to the extent of only 15%.

5. Since this is the only controversy in the present appeal, we have heard the learned Counsel for the owner of the bus as also learned Counsel for the Insurance Company who had insured the motor cycle in question.

6. We have heard the learned Counsel for respective parties on the aspect of contributory negligence, perused the impugned judgement and award in the context of this controversy, and we have referred to such evidentiary material on record to which our attention has been drawn.

7. As a result on hearing and discussion, both the learned Counsel for the respective parties have requested the Court to determine the appropriate proportion of contributory negligence between the drivers of the two vehicles in question, in the light of the facts and circumstances established on the records of the case, without the necessity of recording reasons.

8. As a result of the aforesaid exercise, we are of the opinion that a total consideration of the evidence on record would require us to find that the driver of the motor cycle was contributory to the accident to the extent of 25%, and consequently the driver of the bus was responsible to the extent of 75%. We hold and direct accordingly. In the premises aforesaid, the impugned

award is modified only to the extent of the respective liability of these parties to meet the award in question. In other words, the award so far as it determines the amount of compensation in favour of the original claimant is not disturbed, nor the rate of interest.

9. This appeal is therefore partly allowed with no order as to costs. Decree accordingly.

(Y.B. BHATT,J.)

(H.H. MEHTA,J.)

siji